IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

MFA.No. 1511 of 2001

OPMV.2379/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:
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1. VAREED, KOTTATT HOUSE, PULLOOR P.O.,
MUKUNDAPURAM TALUK.

2. THRESSIAMMA, W/O. VAREED,
KOTTATT HOUSE,
PULLOOR DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY.

RESPONDENTS:
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1. SANI SUNNY,
KACHUNGAL HOUSE,
VADOOKKARA.P.O.,
THRISSUR DISTRICT.

2. M.C. RAJAN,
S/O. MANI,
CHUKKATH HOUSE,
PULLOOR,
THRISSUR DISTRICT.

3. MANAGER,
ORIENTAL INSURANCE COMPANY,
M.G. ROAD, THRISSUR.

R3. BY ADV. SRI.MATHEWS JACOB.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2007 ALONG WITH MFA NO. 346 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. Nos.1511 of 2001 & 346 of 2002

Dated this 22nd day of November, 2007

JUDGMENT

Koshy,J:

Unfortunate parents of a 25 year old youngster filed application for compensation contending that while their son while travelling as pillion rider in a motor cycle driven by 2nd respondent had met with an accident and succumbed to the fatal injuries. Motor cycle hit a cyclist and capsized resulting in fatal injuries to the son. Motor cycle was owned by 1st respondent and insured by 3rd respondent. They claimed a total compensation of Rs.2 lakhs. The motor cycle was insured with the 3rd respondent. The 3rd respondent contested the claim. The contention of the 3rd respondent was that the appellant's son was driving the vehicle and accident occurred due to the his own negligence and he was under the influence of alcohol, as per Ext.A5 wound certificate produced. In the Ext.A1 F.I.R. itself it was stated that he was riding the vehicle. F.I.S. was given by the rider of the cycle as he was also involved in the accident. He stated to the police that deceased was riding the vehicle with 2nd respondent as pillion rider. However, subsequently, charge-sheet was filed making 2nd respondent as the rider. According to Tribunal, it was the result of

collusion with the 2nd respondent who was examined as RW2. PW2 deposed that 2nd respondent was driving the vehicle and he saw the accident while he was walking along the road. RW2 deposed that he did not see PW2 as the time of accident. The Tribunal did not believe him. In paragraph 8 of the award, the Tribunal considered the evidence in detail and came to the conclusion that deceased was riding the motor cycle and accident happened due to his own negligence. We have gone through the evidence on record in detail. We are in full agreement with the finding arrived at by the Tribunal. In view of the above, the claimants are entitled compensation only for no fault liability under Section 140 of the Act.

The Insurance Company also challenged the appeal contending that since the accident occurred due to the negligence of the driver, even compensation under Section 140 of the Act cannot be granted. A Full Bench of this Court in Oriental Insurance Co. Ltd. v. Santha (1999 (3) KLT 425) held that claimants are entitled to get the benefit of no fault liability under Section 140, whether the accident occurred due to the victim's negligence or not. Accordingly, both appeals are dismissed.

Sd/-
J.B. KOSHY, JUDGE.

Sd/-

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. Nos.1511/01 & 346 of 2002

Dated this 22nd day of November, 2007

JUDGMENT